

528.

SURETY BOND—GUARANTEEING PAYMENT OF GASOLINE TAXES TO OHIO TREASURY—NOT REQUIRED FROM STATE AND POLITICAL SUBDIVISIONS.

SYLLABUS:

The State of Ohio and the political subdivisions thereof, are exempt from filing the surety bond required under the provisions of supplemental Section 5528-1 of the General Code.

COLUMBUS, OHIO, JUNE 17, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is hereby made of your recent communication which reads:

“Will you please be kind enough to render an opinion as to whether or not a municipality such as the city of Dayton or city of Lima would be exempt from filing such a bond as is provided for under Section 5528-1 of the General Code?”

Section 5526, General Code, as amended, and supplemental Section 5528-1, General Code, are a part of enacted House Bill No. 188 which will become effective July 25, 1929. Section 5526, General Code, as amended, defines the terms “motor vehicles,” and “dealer” and reads in part as follows:

“The following words, terms and phrases, as used in Sections 5526 to 5541-12 inclusive of the General Code, are hereby defined as follows: * * *

‘Dealer’ shall include any person, firm, association, partnership or corporation, including the State of Ohio or any political subdivision thereof, importing or causing to be imported into the State of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, or producing, refining, preparing, distilling, manufacturing or compounding such motor vehicle fuel as herein defined in the State of Ohio for use, distribution or sale and delivery in Ohio. * * * ”

The term “dealer” as defined in said section includes the State of Ohio or any political subdivision thereof.

Supplemental Section 5528-1, General Code, reads in part as follows:

“Within thirty days after this act takes effect every person, firm, association, partnership or corporation then registered with the tax commission as a dealer under the laws of the State of Ohio levying and imposing excise taxes upon the use or sale of motor vehicle fuel shall file with the tax commission a surety bond in the amount of five thousand dollars on a form to be approved and with a surety or sureties satisfactory to the tax commission, and upon which such dealer shall be the principal obligor and the State of Ohio shall be the obligee, conditioned upon the payment by such dealer to the treasurer of the State of Ohio of any and all excise taxes then or thereafter becoming due to the State of Ohio upon the sale and/or use by such

dealer of motor vehicle fuel which now are or hereafter may be levied or imposed by the State of Ohio, together with any and all penalties and/or interest thereon. In the event any such dealer shall fail or refuse to file such bond within said period of thirty days then the tax commission shall forthwith cancel the certificate theretofore filed by such dealer.

From and after this act takes effect the tax commission shall not accept and file the certificate of any person, firm, association, partnership or corporation desiring to register as a dealer under the provisions of Section 5528 of the General Code unless concurrently therewith such person, firm, association, partnership or corporation shall file with the tax commission his or its bond with surety or sureties satisfactory to said commission in the amount of five thousand dollars and in the form and conditioned as provided in the next preceding paragraph of this section. * * *

It is noted that under the provisions of said amended Section 5526, the term "dealer" shall include any person, firm, association, partnership or corporation, "including the State of Ohio or any political subdivision thereof," but supplemental Section 5528-1, General Code, specifically mentions "person, firm, association, partnership or corporation," and there is no provision in said section that the aforementioned classification shall include the State of Ohio or any political subdivision thereof.

The State of Ohio or any political subdivision thereof is not mentioned in the classification of dealers in the first sentence of said section; neither is the State of Ohio nor any political subdivision thereof mentioned in the second paragraph of said section wherein it is provided that the tax commission shall not accept and file the certificate to register as a dealer, unless concurrently therewith such person, firm, association, partnership or corporation shall file with the tax commission his or its bond.

It seems evident therefor, that although the State of Ohio or any political subdivision thereof is included within the term "dealer" as defined in Amended Section 5526, neither the State of Ohio nor any political subdivision thereof is included within the provisions of Supplemental Section 5528-1, General Code, requiring the filing of a surety bond with the Tax Commission.

It is therefore my opinion, specifically answering your question, that the State of Ohio and the municipalities thereof, are exempt from filing the bond required under the provisions of Supplemental Section 5528-1 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

529.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE W. H. SPOHN PLUMBING COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF NEW TUNNELS AND PIPING, WILBERFORCE UNIVERSITY, WILBERFORCE, OHIO, AT AN EXPENDITURE OF \$11,525.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, June 17, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Board